Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Message Text

SECRET

PAGE 01 STATE 116201

20
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S E C R E T STATE 116201

E.O. 11652: GDS
TAGS: PFOR, MOPS, PGOV, LA
SUBJ: LEGAL STATUS OF ICC FOLLOWING DEPARTURE OF CANADIAN DELEGATION AND ICC REQUEST FOR USG ASSISTANCE

REF: VIENTIANE 4113

1. WE HAVE REVIEWED LEGAL QUESTIONS RAISED PARA 7 REFTEL AND HAVE COME TO FOLLOWING CONCLUSIONS:

(A) WE DO NOT BELIEVE THAT IT WOULD BE USEFUL AT THIS POINT TO TAKE POSITION THAT IMPLEMENTATION OF 1973 LAOS AGREEMENTS AS THEY RELATE TO ICC WOULD VIOLATE 1962 GENEVA PROTOCOL. IN THE FIRST PLACE, IF SUCH IMPLEMENTATION WOULD CONSTITUTE VIOLATION OF 1962 PROTOCOL, IT WOULD BE VIOLATION ON PART OF RLG, NOT MEMBERS OF ICC. (FYI: WHILE ICC MEMBER MIGHT ARGUE, AS CANADA HAS DONE, THAT IT IS NOT REQUIRED TO PARTICIPATE IN ICC ACTIVITIES UNDER ANY TERMS OF REFERENCE OTHER THAN THOSE TO WHICH IT AGREED IN 1962, WE DO NOT BELIEVE IT CAN BE ARGUED THAT PARTICIPATION IN SUCH ACTIVITIES WOULD BE VIOLATION OF THAT PROTOCOL.
SECRET

SECRET

PAGE 02 STATE 116201

TO THE CONTRARY, THIS WOULD REPRESENT BEST EFFORTS OF

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

MEMBER TO CARRY OUT 1962 MANDATE. AS PRACTICAL MATTER, LPF HAS PREVENTED OPERATION UNDER TERMS OF PROTOCOL (E.G., BY REFUSING ENTRY INTO LPF AREAS WITHOUT SPECIFIC PERMISSION) FOR MANY YEARS AND 1973 LAOS AGREEMENT OFFERS MORE PROMISE FOR EFFECTIVE ROLE THAN ICC HAS HAD IN LONG

TIME. END FYI) FURTHERMORE, WE COULD NOT ARGUE THAT SUCH RLG VIOLATION RENDERED THOSE PARTS OF 1962 PROTOCOL DEALING WITH ICC NULL AND VOID WITHOUT RAISING SERIOUS QUESTIONS AS TO CONTINUED VALIDITY OF OTHER PARTS OF GENEVA PROTOCOL WHICH IT IS IN OUR INTEREST TO SUPPORT, SUCH AS THOSE DEALING WITH ARMS SUPPLY.

(B) WE ALSO BELIEVE THAT WE SHOULD NOT AT THIS TIME ARGUE THAT ICC WILL LEGALLY BE PRECLUDED FROM FUNCTIONING AFTER WITHDRAWAL OF CANADIAN DELEGATTON. IN 1961-62 THE UNITED STATES WENT TO GREAT PAINS TO ESTABLISH A NEGOTIATING RECORD IN SUPPORT OF THE POSITION THAT THE FAILURE OF ONE MEMBER OF ICC TO AGREE TO THE SUBMISSION OF REPORTS ON INVESTIGATIONS PURSUANT TO ARTICLE 15 OF GENEVA PROTOCOL WOULD CONSTITUTE A BREACH OF THE AGREEMENT AND WOULD LEAVE THE OTHER MEMBERS OF THE COMMISSION FREE TO SEND IN THEIR REPORTS WITHOUT THE SIGNATURE OF THE THIRD MEMBER. THESE EFFORTS WERE SO SUCCESSFUL THAT IT WOULD NOW BE VERY DIFFICULT FOR US TO CLAIM THAT THE ABSENCE OF THE CANADIAN DELEGATION FROM VIENTIANE PRECLUDED THE ICC FROM SUBMITTING AGREED REPORTS. SINCE INVESTIGATIONS MAY BE INITIATED BY MAJORITY VOTE WE SEE NO ARGUMENT, SHORT OF THE ARGUMENT REJECTED IN PARA 1(A) ABOVE, FOR THE POSITION THAT INVESTIGATIONS MAY NOT BE CONDUCTED IN THE ABSENCE OF THE CANADIANS. LEGALLY, ALL THE CANADIAN ABSENCE WILL DO IS PRECLUDE THE COMMISSION FROM ADOPTING QTE CONCLUSIONS AND RECOMMENDATIONS. UNQTE

2. ON BASIC QUESTION OF OUR ATTITUDE TOWARD ICC, WE THINK WE SHOULD DO ALL WE CAN TO PRESERVE ICC AND MAKE IT AS EFFECTIVE AS POSSIBLE. EVEN IF ICC PRESENCE TURNS OUT TO BE LARGELY SYMBOLIC, WE BELIEVE IT CAN SERVE USEFUL PURPOSES. ICC DELEGATES CAN AND HAVE SERVED USEFUL LIAISON FUNCTIONS AND, IN TIMES OF TENSION, HAVE BEEN

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REASSURING AND CALMING INFLUENCES. ALSO ICC PRESENCE KEEPS LAOS IDENTIFIED AS AREA OF INTERNATIONAL CONCERN.

3. IN LIGHT OF THE ABOVE, WE BELIEVE THAT ANOTHER ATTEMPT SHOULD BE MADE TO CONVINCE SOUVANNA TO INTERCEDE FORCEFULLY WITH CANADIANS TO PREVENT TROUBLESOME PROSPECT OF POLISH-INDIAN ICC. FOLLOWING POINTS SHOULD BE MADE TO SOUVANNA AS YOU CONSIDER USEFUL:

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

(A) WHILE 73 TERMS OF REFERENCE UNDER LAOS AGREEMENT MAY DIFFER SOMEWHAT FROM TERMS OF REFERENCE UNDER 62 ACCORDS, CANADIANS AND OTHER ICC MEMBERS CONTINUE TO BE OBLIGATED TO MAKE THEIR BEST EFFORTS TO FULFILL 1962 MANDATE. CANADIAN WITHDRAWAL AT THIS POINT SEEMS PARTICULARLY INAPPROPRIATE SINCE ICC NOW HAS BEST OPPORTUNITY IT HAS

HAD IN TEN YEARS TO PERFORM USEFUL FUNCTION. IT SHOULD BE NOTED THAT 62 ACCORDS CONTAIN NO RPT NO PROVISION FOR WITHDRAWAL OF ICC MEMBER.

(B) WE THINK ICC IS AN IMPORTANT PART OF THE 73 AGREEMENTS AND CAN BE OF REAL ASSISTANCE TO SOUVANNA IN RESOLVING THE DIFFICULTIES THAT ARE INEVITABLY GOING TO ARISE. FURTHERMORE, THE LOPSIDED INVESTIGATING AND REPORTING THAT COULD RESULT FROM CANADIAN WITHDRAWAL WOULD BE VERY TROUBLESOME BOTH TO SOUVANNA AND USG, E.G., IN AREAS OF MILITARY ASSISTANCE AND RECONNAISSANCE.

(C) SOUVANNA MUST FACE THE FACT THAT THE ONLY REMEDY FOR DISTORTED REPORTING AVAILABLE TO HIM WOULD BE TO RESTRICT ICC ACCESS TO AREAS UNDER HIS CONTROL -- WITH ALL THE POLITICAL COSTS SUCH A MOVE WOULD ENTAIL.

(D) SOUVANNA ALSO MUST BE DISABUSED OF NOTION THAT HE DOES NOT REALLY NEED THE CANADIANS BECAUSE THEY CAN EASILY BE REPLACED -- THIS SIMPLY IS NOT THE CASE. EVEN IF A WILLING REPLACEMENT COULD BE FOUND THE CONCURRENCE OF ALL 14 PARTICIPANTS IN THE 1962 GENEVA CONFERENCE WOULD BE REQUIRED LEGALLY.

(E) FYI: IF CANADIANS IN FACT DO WITHDRAW AND SITUATION

SECRET

WITH TWO PARTY ICC DETERIORATES BADLY, WE MAY WISH TO CONSIDER APPROACHING CANADIANS AGAIN WITH BENEFIT OF THE INCREASED LEVERAGE PROVIDED BY THE EXISTENCE OF A BAD SITUATION FOR WHICH THEY SHARE HEAVY RESPONSIBILITY. END FYI

4. WE WILL WISH TO SEE RESULTS OF ABOVE DEMARCHE PRIOR TO REACHING DECISION ON ANY PENDING OR FORTHCOMING EQUIPMENT REQUESTS FOR ICC. THIS SHOULD BE CONVEYED TO SOUVANNA. KISSINGER

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